AT&T

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December 18, 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Written Ex Parte Communication, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

Attached for submission into the record are two proposed limiting rules defining the circumstances under which High Capacity Loops and Interoffice Transport Facilities should continue to be made available on an unbundled basis. These rules are built on the detailed explanations regarding the costs associated with constructing loop, collocation and backhaul infrastructure and facilities submitted into the record by AT&T on November 25, 2002. The rules take into consideration all the economic and practical impediments that CLECs face when considering whether to deploy facilities.

Consistent with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,

Joan Marsh

cc: Thomas Navin
Jeremy Miller
Robert Tanner

AT&T's Proposed Limiting Rule for Access to Interoffice Transport

[Rule 51.319(d)(1)&(2) (identifying interoffice transport as an unbundled network element subject to unbundling) to remain intact]

(3) Incumbent LECs may not impose use or commingling restrictions on a requesting carrier's ability to use loop or dedicated transport elements or combinations of loop and dedicated transport elements (EELs) purchased at TELRIC-based rates to provide any telecommunications service, including special access.

(4) EELs must be available to enable requesting carriers to multiplex traffic from the DS0 to DS1 level and from the DS1 to DS3 level, and requesting carriers must be able to cross-connect such EELs to other transport UNEs without any need for collocation.

(5) Requesting carriers must be permitted to convert existing special access configurations to EELs using the existing Access Service Request (ASR) ordering process or another process mutually agreed upon by the requesting carrier and the incumbent LEC.

(6) Incumbent LECs must waive requesting carriers' obligations under previously negotiated term and volume commitments for special access services when a requesting carrier seeks to transition special access arrangements to EELs, to its self-deployed facilities or to facilities provided by an alternative carrier. Such obligations must also be waived when a requesting carrier seeks to transition EELs to self-deployed or alternatively supplied facilities.

(7) <u>Preconditions for limiting access to dedicated interoffice transport</u> - Before granting a request to limit the availability of interoffice transport as an unbundled network element at TELRIC-based rates, an incumbent LEC must demonstrate to the relevant State commission that, on a statewide basis, it complies with sections (d)(3)-(6) above and also that:

> (i) Requesting carriers can convert special access arrangements to EELs using the same facilities and without service disruption for the customer, and that the incumbent LEC assesses only TELRIC-based charges for such conversions.
>
> (ii) The incumbent LEC's performance provided in support of EELs is equal to its performance in support of special access.

(iii) The incumbent LEC affirms it will provide shared transport, cross-connects, interconnection trunks, transiting and termination at TELRIC-based rates.

(8) Availability of competitive alternatives – An incumbent LEC may provide the transport functionality used to provide any telecommunications service by any requesting carrier to connect two specific locations (defined by two unique 8-character CLLI codes) at a market-based price, provided that the incumbent LEC demonstrates to the relevant State commission that each of the preconditions in sections (d)(3)-(7) above have been met and that four or more non-affiliated carriers, none of which is in bankruptcy proceedings, operate facilities that connect the two locations, and that each such carrier:

(i) Owns the fiber facility used to connect the two locations;

(ii) Offers sufficient capacity on a wholesale basis at the transport level to serve existing and foreseeable demand desired by the requesting carrier;

(iii) Provides capacity that meets appropriate industry technical and service quality standards, including those promulgated by Telcordia; and

(iv) Offers reasonably efficient operational support services for pre-ordering, ordering, provisioning and maintenance.

Any determination by a State commission that a facility may be offered at a market-based price in a specific situation shall be subject to a transition period of no less than twenty-four months or the remaining length of existing interconnection agreements, whichever is longer.

(9) Limitation in the Absence of Competitive Alternatives -

(i) Except as provided in section (d)(8) above, if a requesting carrier seeks to provide any telecommunications service through use of interoffice transport facilities that connect two specific network locations (defined by two unique 8-character CLLI codes), the incumbent LEC must provide such functionality as an unbundled network element at TELRIC-based rates if the CLEC has cumulatively activated fewer than 18 DS3s of UNE transport functionality between the two identified network locations.

(ii) If a requesting carrier seeks to use 18 or more DS3s of UNE transport capacity between two specific network locations, an incumbent LEC may request authority from the relevant State commission to offer such transport capacity between the two network locations at a market-based price, provided that it demonstrates that all of the conditions in sections (d)(3)-(7) above have been met. If the State commission determines that the incumbent LEC has fully complied with all such conditions, the ILEC may commence charging market-based prices 24 months following the requesting carrier's first request to exceed the capacity threshold, or 24 months after the State commission's determination that all of the conditions in sections (d)(3)-(7) have been met, whichever is later.

(10) Additional Provisions –

(i) An incumbent LEC may not allow the process of resolving any issues relating to its conversion of special access arrangements to EELs to delay the implementation of a requesting carrier's otherwise valid conversion request, and the State commission shall assure that billing for such functionalities is adjusted retroactive to the date of an otherwise valid conversion order.

(ii) A State commission may deny, modify or reverse a proposed or previously authorized incumbent LEC request to apply market-based pricing if a requesting carrier demonstrates either:

(A) The factors affecting the time to construct its own facilities to replace the identified incumbent LEC transport facilities (including, but not limited to, access to rights of way, lack of collocation capacity, construction moratoria imposed by local governmental entities) substantially impede its ability to construct such facilities on the identified route within the period before market-based pricing is put into effect.

(B) The incumbent LEC has failed to comply, or to continue to comply, with any of the conditions of sections (d)(3)-(7) above.

(iii) On an LSO-pair specific basis, a State commission may modify the 18 DS3 capacity threshold in subsection (d)(9) above based upon its review of the input costs (*e.g.*, equipment, conductors, labor, cost of money, equipment life, etc.) necessary to replicate the incumbent LEC facility and the charges for other necessary resources, including but not limited to rights of way, structures, collocation and power that are applicable to the LSO pair under review.

(iv) An incumbent LEC must perform conditioning and other similar functionality on existing interoffice transport facilities that are necessary to make transport facilities operational in the same manner that the incumbent LEC makes comparable facilities available to special access purchasers.

AT&T's Proposed Limiting Rule for High Capacity Loops

(a) Except as provided in subsection (b) below, ILECs shall make loop functionality available as an unbundled network element at TELRIC-based rates, regardless of the underlying physical architecture, transmission capacity delivered to the customer premises or transmission protocol employed to provide the loop functionality:

(b) If a requesting carrier seeks to serve particular customer(s) at a single location where the requesting carrier has access to common space at the location, and seeks to use, in total, more than 3 equivalent DS3s of transmission capacity to provide loop functionality, then the ILEC may offer the requested loop functionality at a non-TELRIC price, provided that all of the following conditions are met:

(1) Upon receipt of an otherwise valid order, the ILEC must deliver the loop functionality ordered by the requesting carrier according to prevailing service intervals for unbundled loops or other comparable facilities. Failure to comply with this provision constitutes a waiver of the ILEC's option to offer the loop functionality at a non-TELRIC price.

(2) The ILEC has notified the requesting carrier of its intent to offer the loop functionality at a non-TELRIC price as part of its standard loop pre-ordering process for loop UNEs, and has disclosed the specific price that it proposes to apply to that loop functionality as part of the pre-ordering transaction.

(3) The ILEC has provided the requesting carrier with immediate access to a copy of the written and legally enforceable provisions by which the ILEC currently obtains access to customers served at the identified location. Failure to provide such documentation in a timely manner shall constitute a waiver of the ILEC's option to apply market-based pricing to the requested loop functionality.

(4) The ILEC may not apply non-TELRIC pricing to the UNE loop functionality until 12 months following the CLEC's written acceptance of the ILEC's market price, provided, however, that in no event may the ILEC apply non-TELRIC pricing to loop functionality if the requesting carrier provides written evidence pursuant to (c) below demonstrating that an impairment exists or that the nearest existing point on the requesting carrier's own facilities capable of providing access to its network is 1,000 feet or more from the location to be served.

(c) The requesting carrier, through written notification to the ILEC prior to activation of the loop, may claim impairment with respect to any loop functionality that the ILEC proposes to offer at a market-based price. In such cases, the requesting carrier must submit written certification that (a) identifies the basis for the impairment, (b) is signed by an authorized representative of the carrier and (c) is delivered to the ILEC authorized representative within 10 business days or the due date of the loop, whichever is later.

(1) If the requesting carrier makes such a claim, the ILEC must deliver the loop functionality according to the scheduled availability date and may only assess TELRIC-based rates for such functionality until the later of the expiration of the 12 month period set forth in (b)(4) above or the resolution of the requesting carrier's claim as described in (c)(4) below.

(2) If the ILEC disputes the requesting carrier's claim of impairment, it must notify the requesting carrier within 10 business days of receipt of the requesting carrier's impairment claim. Failure of the ILEC to respond in this period shall be deemed acceptance of the requesting carrier's claim of impairment.

(3) Evidence supporting a requesting carrier's claim of impairment shall be consistent with Commission rules, and may include, but is not limited to, the following, each of which shall be given substantial weight:

(i) Evidence that it is impractical or uneconomic for the requesting carrier to connect its existing fiber facility to the identified location because, among other things, the existing facility has insufficient capacity; the costs of connection to the existing fiber facility are excessive compared to the committed revenues from existing contracts with one or more customers at the location; the requesting carrier is unable to obtain the nondiscriminatory rights of way and/or building access to the identified location under terms consistent with both state and federal law; the absence of a technically feasible access point to connect a loop to the requesting carrier's existing fiber facility, and/or other circumstances, including but not limited to the unavailability of capital, make it unreasonable to require the requesting carrier to extend its facilities.

(ii) Evidence that customer requirements for service, customer resistance to the transfer of existing services to a new loop and/or customer refusal to enter into term agreement(s) prevent the requesting carrier from having a reasonable opportunity to recover its investment to construct dedicated loop connectivity for the identified location.

(4) Factual disputes between the requesting carrier and the ILEC shall be determined by the relevant State commission, or as mutually agreed by the parties.

(5) If the finder of fact resolves a dispute in favor of the requesting carrier, then the ILEC shall be required to provide the requested loop functionality as a UNE at TELRIC-based rates. If the dispute is resolved in favor of the ILEC, the finder of fact shall assure the ILEC provides the requesting carrier with at least the following options: (1) accepting the market-based price for the loop UNE-functionality (including any necessary true-up for past billing periods) and (2) converting to an alternative service configuration such as ILEC special access service, subject only to reasonable and cost-based conversion charges.

(d) On a loop-specific basis, a State commission may adjust the 3 DS3 capacity threshold in subsection (b) above based on a determination that such an adjustment would not impair the requesting CLEC, applying the same criteria set forth in subsection (c)(3)(i & ii) above. However, the State commission may not permit market-based pricing of loop UNEs having capacities of less than 1 DS3.